LOS ANGELES BAR BULLETIN

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VOL. 26 JULY, 1951 No. 11

PRESIDENT'S PAGE

H. F. Selvin

AT THE session of the Legislature just adjourned, there was adopted a bill amending in various particulars the sections of the Civil Code dealing with award of so-called temporary alimony and suit money in divorce and separate maintenance actions. This measure is designed to bring the statutory provisions on this subject into line with judicial interpretation, to remove certain anomalies and inconsistencies of language, and generally to bring the statutes into a consistent and harmonious pattern.

The enactment of this bill is the result of several years of active work by the Los Angeles Bar Association. The suggestion for it came from Honorable Paul Nourse. The subject was carefully studied and the bill, substantially as adopted, was drafted by our Committee on Substantive Law. It was presented to the State Bar Conference of Delegates by our delegation, and there approved. Finally, the argument for enactment was presented to an appropriate committee of the Legislature by Mr. Leonard A. Diether, under whose chairmanship the Association's work had been carried on.

Mention of the matter is made here because it is illustrative of one of the many ways in which the activities of this Association result in constructive contributions to the administration of justice. These activities are little publicized and only vaguely known, even among our own members. The lack of publicity, however, is no indication that solid work has not been and is not being done.

HERMAN F. SELVIN.

RESOLUTION OF THE BOARD OF TRUSTEES

HUBERT T. MORROW

It is with profound sorrow that we chronicle the passing on May 17, 1951, of Hubert T. Morrow, who will long be remembered as one of the very ablest lawyers in the history of the bar of Los Angeles. He had been a member of the Los Angeles Bar Association during the period of his practice so far as shown by its records. He was a member of the American Bar Association continuously since 1922.

Mr. Morrow was born March 29, 1881, in Waterbury, Connecticut. He came to California in 1888 with his parents and had resided in Los Angeles continuously since 1889. He received his education in the public schools, graduating from the Los Angeles High School in the class of 1900. He was admitted to practice by the Supreme Court of California in 1902. He was a member of the Board of Trustees of this association from 1924 to 1929, and was President in the year 1928-1929.

During his term as President he organized the Junior Bar Committee, now the Junior Barristers, in order that the young lawyers might become acquainted with the association's activities and engage in its work. The Junior plan has since been adopted by many of the state bar associations throughout the nation and is an integral part of the work of the American Bar Association. He also appointed a committee to investigate and report upon charges of brutality alleged to have been committed by police officers upon prisoners, which came to be known as the Committee on Constitutional Rights. Upon the expiration of his term as President his successor, Honorable Guy R. Crump, added him to the committee where he served as chairman with thoroughness and distinction. As a result of the activities of this committee such charges have become rare. That committee has remained one of the important committees of the association.

From 1929 to 1951 Mr. Morrow served on 36 different committees of this association in addition to the Committee on Constitutional Rights including, among others, Committees on Judiciary, of which he was chairman at the time of his death, Judicial Candidates, Selection of Judges, Expert Medical Testimony, Advisers to Junior Barristers, and the Committee of the Bar to Cooperate with Judges of the Superior Court, of many of which, in addition to the Judiciary Committee, he was chairman.

He was a member of the Board of Governors of the State Bar from August 1942 to September 1944. He served on the State Bar Committee on the Administration of Justice and on the Committee for revision of the Rules on Appeal. He was a member of the University Club, having served three years on its Board of Directors, the Sunset Club, Scribes, and Los Angeles Yacht Club.

Mr. Morrow was a member of the State Bar committee which negotiated and drafted the treaties between the legal profession and the banks, title companies, and trust companies. His authorship of those treaties, covering a very important field of the relations between lawyers and allied businesses, constituted a most important contribution to his profession. For years he was one of the State Bar representatives on the committees which administered the treaties which he had helped to draft.

Whenever called upon Mr. Morrow willingly gave his time and talents to civic matters, more particularly to those relating to the legal profession. His influence was constantly exercised in maintaining the high standards of the profession. He was one of the leaders in the movement to take the judiciary out of politics and to keep good judges on the bench without the necessity of their engaging in political campaigns or extrajudicial activities.

He exercised an important influence among the young practitioners, advising them in their legal problems, counseling them along ethical paths. He provided the younger men with work connected with the Bar Association's committees, thus preparing them for future active work in the association. Scores of attorneys now prominent in the profession testify to the benefit they received from his example and advice.

He was a member of the firm of Finlayson, Bennett & Morrow for 21 years and at the time of his death was senior member of the firm of Morrow & Morrow.

Mr. Morrow is survived by his widow, Mrs. May Morrow, his son, John C. Morrow, Esq., who was his partner, and two daughters, Mrs. Donald (Marjorie) Ashen and Mrs. Robert (Barbara) Weir, and nine grandchildren.

BE IT RESOLVED by the Board of Trustees of the LOS ANGELES BAR ASSOCIATION that the sympathy of the Board and of the membership of the Asociation be extended to Mr. Morrow's family, that copies of this Resolution be sent to his widow and children, and that the Resolution be published in the LOS ANGELES BAR BULLETIN.

HONORABLE EMMET H. WILSON, *Chairman;*
MR. HENRY KNOOP,
MR. CHARLES E. BEARDSLEY,
Committee.

Adopted June 12, 1951.

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SUPPLEMENTAL PROCEEDINGS

By Harold C. Shepherd*

Harold C. Shepherd

"JUDGMENT for plaintiff," says the Judge. You and your client beam and walk out of the courtroom arm in arm. Your client is happy in the thought that his legal right has been upheld and that he was represented by able counsel. Perhaps you, likewise, have a thought or two about the "able counsel" your client had. The plaintiff, not being versed in the vagaries of the law, looks upon the judgment as "money" stated in a legal way—he may even begin spending in anticipation of payment. You should know, however, that although a judgment glitters it may not be gold.

How many unsatisfied judgments do you have in your office? How many thousands of dollars do those judgments total? More important, how many unhappy, dissatisfied clients do those judgments represent?

When it becomes evident that the defendant is not going to disgorge in cold, hard cash, what is your next step? Part of the answer is to try to find property of the debtor out of which the judgment may be satisfied. This may be done by way of supplemental proceedings.

These proceedings are purely statutory, so you cannot deviate from the proceedings set up in the code.[1]

The first and foremost purpose of these proceedings is to ferret out assets, not exempt from execution, out of which the judgment may be satisfied in whole, or in part. It is a substitute for the old creditor's bill,[2] but where these proceedings are inadequate then the creditor's action still lies.[3] If, for example, an

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*Commissioner, Superior Court of Los Angeles County.

[1]Farmers and Merchants Bank v. Bank of Italy, 216 Cal. 452, 454 (1932).

[2]Blake v. Blake, 86 Cal. App. 377 (1927).

[3]Booge v. First Trust and Sav. Bank, 46 C. A. 2d Supp. 879 (1941).

alleged debtor of the judgment creditor denies liability to the judgment debtor or claims part of the property, supplemental proceedings are inadequate because no order, other than a restraining order, can be made by the referee. Therefore, you may proceed by suit directly against the debtor of the debtor. It is not necessary to obtain an order authorizing the suit under Section 720 of the Code of Civil Procedure.

There is a very important secondary purpose in conducting a supplemental hearing, to wit, as a partial basis for preservation of your right to an execution under Section 685 of the Code of Civil Procedure, which provides for issuance of an execution after the lapse of five years from the date of entry of the judgment. This is done upon motion, supported by affidavits setting forth the reasons for failure to proceed under Section 681 of the Code of Civil Procedure. There are many cases interpreting what constitutes a diligent effort to proceed under the above code section.[4] One of the usual requirements is examination of the debtor for assets. Although in some instances a diligent showing can be made without such examination, it would seem to be a wise thing to do in each case where a defendant is reluctant to pay.

The code provides a remedy against two classes of individuals: judgment debtors, and debtors of judgment debtors.

Section 714 of the Code of Civil Procedure provides for examination of a judgment debtor after the issuance and return of execution, unsatisfied in whole or in part. Section 715 of the Code of Civil Procedure applies when the writ has been issued and is still outstanding. The latter section also provides for arrest of the debtor upon affidavit to the effect that there is danger of the debtor absconding. This portion of the section is very drastic and any attempt to proceed thereunder must be supported by ironclad affidavits. No such attempt has come to the writer's attention in the last ten years.

To obtain a hearing under the section above noted, it is necessary to prepare an affidavit for, and order directing, the debtor to appear at a time and place fixed by the court. The County Clerk's

(Continued on page 421)

[4]See New California Digest, Secondary Supplement for Vol. 10 (1949).

UNEMPLOYMENT INSURANCE AND THE LAWYER

Adrian A. Kragen*

Adrian A. Kragen

ALTHOUGH we have had an unemployment insurance act in California since 1935, it has received little or no attention from the general practitioner at the bar. Only a few members of the profession have had any appreciable experience with this very important field of social legislation and there has been considerable lack of interest in the field by the bar generally. However, the lack of interest by the bar has been more than met by a special interest by the newspapers. Within the past few years, the public press has frequently printed the results of its own and legislative investigations of unemployment insurance and as a result extremely unfortunate impressions have been left in the minds of many of those who are called our "solid" citizens. We have read of the wholesale chiseling, of the departmental inefficiency and of the statutory loopholes which seemingly have made a farce of the original purpose of the system. While undoubtedly there has been considerable basis for some of the statements printed in the press, there has been in addition some exaggeration and quite general misunderstanding by the public. Although the publicity has increased the general interest in the field, it has not assisted in the understanding of the problem, especially among the members of the bar.

It is the opinion of the writer that the bar can render a real service not only to the community, in the field of proper administration of this very important piece of social legislation, but also to their employer-clients by the protection of the interests of those clients. It may be well, in view of what seems to be fairly general ignorance of the Unemployment Insurance Act by the members of the bar, to indicate very sketchily some ways in which the

*Mr. Kragen was formerly Deputy Attorney General of California and Instructor of Taxation at the School of Law, University of California. He is a member of the firm of Loeb and Loeb.

lawyer can be of assistance to his client in matters relating to unemployment insurance.

It should first be realized that practically every employer in the State of California, with the exception of agricultural employers, is subject to the Unemployment Insurance Act. Each employer has to pay a tax as provided in Section 39 of that act. However, the rate of tax is not uniform and its gradations do not depend upon the amount of income or business of the taxpayer. Rather, California has what is known as a merit rating or experience rating system which is used as the measure of the tax liability. California has what is termed a pooled fund; that is, all the contributions go into a single pool and benefits are paid out of that pool regardless of the contributor or of the employee involved. However, bookkeeping records are kept for each subject employer. These bookkeeping records include all the contributions made by each employer since it became subject to the act and there are deducted therefrom the charges to each employer's account by reason of benefits paid to his ex-employees and properly, under the statute, chargeable to that employer's account.

As of June 30th of each year, the accounts are balanced and each employer's net reserve in that account is measured against the average of its three preceding calendar years' total taxable payroll. If the percentage figure that results is sufficient, the employer will get a reduced rate for the purpose of his obligation for the subsequent calendar year, for contributions upon his taxable payroll. For example, if the employer's reserve is 11 per cent or more of his taxable payroll, he will pay 1 per cent rather than the general rate of 2.7 per cent.

The schedules are set forth in Section 39 and there is another schedule which will apply if the total pooled fund is large enough to warrant further tax reductions. Also, if the pooled fund becomes too small, all employers automatically pay a 2.7 per cent rate until the fund is replenished.

It is therefore quite apparent that the reduction of charges to the employer's account through the prevention of payment to claimants of benefits to which they are not entitled may mean substantial financial benefit to the employer. The lawyer properly advised of the statutory law and its interpretation can render valu-

(Continued on page 427)

PUBLIC DEFENDER PROPOSED FOR UNITED STATES COURTS

In response to recommendations of the Federal Courts Criminal Indigent Defense Committee of the Los Angeles Bar Association, the Board of Trustees adopted, on May 8, 1951, a resolution favoring the establishment of a Public Defender system in the courts of the United States. Copies of the resolution were transmitted to each Senator and Representative from California. A bill (H. R. 3978) empowering each United States District Court to appoint a public defender and assistants was introduced in Congress by Mr. Celler on May 4, 1951. The bill itself has not been the subject of official action by the Board of Trustees or the Committee. The Board's resolution and the transmittal letters to the California Senators and Representatives are quoted below:

RESOLUTION OF BOARD OF TRUSTEES

"WHEREAS, the right of persons accused of crime to appear and be represented by counsel is an integral part of due process of law guaranteed by the Bill of Rights, and

"WHEREAS, many persons accused of crimes within the jurisdictions of the Courts of the United States are without sufficient means or resources to employ counsel to represent them and as a result obtain such representation only through counsel appointed by the Court who act without compensation, and

"WHEREAS, the cost of providing such unfortunate persons with the representation guaranteed them by our Constitution should properly be a cost of the administration of justice rather than of the individual lawyer or lawyers appointed to represent them and

"WHEREAS, the problem of providing adequate and competent representation for persons without sufficient means to employ counsel has been successfully solved in many large cities and states by the establishment of a Public Defender system,

"NOW, THEREFORE, BE IT RESOLVED that it is the sense of the Board of Trustees of the Los Angeles Bar

Association that a Public Defender system providing indigent persons accused of crimes in the courts of the United States with adequate legal representation at public expense, be established in such of the judicial districts of the United States as have a large number of such indigents requiring such legal representation.

"BE IT FURTHER RESOLVED that a copy of this resolution be transmitted to each United States Senator and Representative from the State of California with the request that they procure the introduction, and actively support the enactment, of legislation in the present Congress which will authorize and provide for the establishment of such a system in the Courts of the United States."

TRANSMITTAL LETTER

"At the direction of the Board of Trustees of the Los Angeles Bar Association I am enclosing a copy of a resolution adopted by the Board with respect to the establishment in the United States Courts of a Public Defender System. This resolution reaffirms a similar resolution adopted by our Board on February 11, 1949.

"To give you some idea of the need for such a sys-

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tem in the Southern District of California, the following information may be of interest to you. Several years ago at the request of the United States judges in that District, the Los Angeles Bar Association appointed a Federal Courts Criminal Indigent Defense Committee. This Committee insures the attendance at all criminal calendars of the United States District Court of a number of competent attorneys who are willing to undertake, without compensation, the defense of persons accused of crime and who are without the means with which to employ counsel. The extent of the work performed by that Committee is indicated by the following statistics for the years 1948, 1949, and 1950.

	1948	1949	1950
Number of cases in which committee members were appointed	269	161	237
Pleas of guilty and *nolo contendere*	130	108	217
Dismissals obtained	12	10*	7
Number of trials	20	14	13
Verdicts of not guilty	10	8	5

"In addition, members of the Committee have appeared on behalf of indigent defendants on many occasions in connection with modification of sentences, removal proceedings, and proposed institutions of *habeas corpus* proceedings. The aggregate time consumed by these various appearances, including trial times, comes to several hundred hours per year.

"The Los Angeles Bar Association is, of course, happy to be able to supply this public service and will continue to do so as long as the need for that service exists. It is our position, however, as expressed in the resolution which we have adopted, that in those districts where the volume of this kind of work justifies it, the representation of indigent defendants should be furnished by the government through some form of Public Defender system.

"We commend this matter to your attention and request your active support of a program which will bring about the enactment of the necessary enabling legislation.

Very truly yours,

HERMAN F. SELVIN,
President, Los Angeles Bar Association."

*This figure represents dismissals as to all counts. Dismissals of less than all counts were obtained in 20 cases.

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LOS ANGELES BAR ASSOCIATION COMMITTEE ON LEGAL ETHICS

OPINION NO. 180

ADVERTISING AND SOLICITATION—SPECIALIZED LEGAL SERVICE:

An attorney specializing in a particlar branch of the law not generally engaged in by the ordinary practitioner may, with ethical propriety, mail to the profession a brief, dignified notice to apprise the profession of such specialized service.

An attorney specializing in a particular branch of the law not generally engaged in by the ordinary practitioner, inquires whether or not it would be proper for him to mail to the profession an announcement substantially as follows:

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As stated in our Opinion No. 110, the publication of a brief, dignified notice in a legal periodical by an attorney engaged in rendering specialized legal service is countenanced by American Bar Association Canon 46 which provides:

> "Where a lawyer is engaged in rendering specialized legal service directly and only to other lawyers, a brief, dignified notice of that fact, couched in language indicating that it is addressed to lawyers, inserted in legal periodicals and like publications, when it will afford con-

venient and beneficial information to lawyers desiring to obtain such service, is not improper."

The mailing of such notice must be to lawyers exclusively. Such mailing is an act substantially equivalent to the publication mentioned in Canon 46.

It appears that the type of legal work contemplated under this inquiry is sufficiently well defined to constitute a special branch of legal practice and, therefore, may be considered a "specialty." (*Cf.* Opinions Nos. 119 and 124.)

The purpose of such an announcement is simply to apprise the profession of the special service which can be rendered by its sender. All matter included therein referring to biography, experience, references, etc., of the specialist would tend to make the anioucement something more than the brief, dignified notice contemplated by Canon 46 which permits a limited exception to Canon 27 which forbids publication to the general public of such an announcement. Such an exception is to be strictly construed to the end that differences of opinion as to matters of propriety may be minimized as much as possible, if not wholly avoided, and the dignity of the profession maintained.

Accordingly, the committee is of the opinion that all capitalized letters, except the attorney's name, giving undue emphasis and giving rise to a possible suggestion of advertising are inappropriate in such an announcement. Further, the tone of the notice would be more dignified and more in keeping with professional standards if the references to practice before the courts and courts-martial were rephrased to read "including practice before courts-martial."

We conclude that the question submitted may be answered in the affirmative provided the announcement is modified substantially in accordance with the suggestions appearing herein.

This opinion, like all opinions of this Committee, is advisory only. (By-Laws, Art. VIII, Sec. 3.)

Brothers-In-Law

By George Harnagel, Jr., Associate Editor

A 16 millimeter motion picture film, America the Beautiful, sponsored by the **Minnesota** State Bar Association, has been building good will for lawyers throughout the state during the past few months. The film is made available without cost to any group that wants to use it.

* * *

A new series of television programs, "Final Decision," was inaugurated by the **Columbus** Bar Association a short time ago. The unrehearsed program consists of a panel of local attorneys who discuss the law applicable to a set of facts stated by the moderator, after which the actual court decision is announced.

* * *

"The first minimum fee schedule adopted by The **Detroit** Bar Association came into existence because of the great need for an official statement of approved minimum legal fees in specified typical situations. * * *

"Following adoption of the original Minimum Fee Schedule in 1938 sharp increases in living and professional costs necessitated a revision of the original schedule. * * * The last revision of the entire schedule, which is the one presently in effect, was adopted May 6, 1949. Since that date living costs and the expense of running a law office have again increased.

"To meet these changes * * * The Advisory Fee Committee with the approval of the Board has undertaken a new revision. * * *"—*The Detroit Lawyer.*

* * *

The Board of Governors of the **Oregon** State Bar is undertaking a complete revision of its minimum fee schedule.

* * *

A state-wide organization of women lawyers has been formed in **New York.**

Approximately 70 lawyers have already participated in "You and the Law," a radio program produced under the auspices of the **Junior Bar Conference** of the **American Bar Association** and the **Minnesota** State Bar Association.

* * *

The **Miami Beach** Bar Association has created a Speakers Committee for the purpose of supplying speakers to local organizations. Political and other controversial topics are taboo.

* * *

The **Philadelphia** Bar Association has been running a series of ads on the theme: "When in doubt consult a lawyer."

* * *

The Board of Governors of the **Oregon** State Bar has adopted the practice of inviting law students to attend its regular meetings.

* * *

A committee of the **District of Columbia** Bar Association has rejected a proposal that the Association undertake to save money for its members by making group purchases.

* * *

The **Minnesota** Bar Association recently celebrated the fiftieth anniversary not of its organization but of its reorganization. The festivities included the publication of a golden-backed, out-size Golden Anniversary number of its monthly magazine. It contains a lively account of the practice of law in territorial days. Typical are stories of the backwoods justice of the peace who had no jurisdiction to try title but "was not willing to allow the dignity of his office to be impaired by such an admission to the unknowing citizens who accepted him as their sole judicial authority."

* * *

The **Indiana** State Bar Association, with the assistance of public relations counsel, has prepared a series of advertisements on the general theme "Facts About Lawyers and The Law." Plates are furnished free to city and county bar associations in the state who agree to defray costs of publication in their local papers.

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*Assistant Reference Librarian, Los Angeles County Law Library.

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Damages—Destruction of Chattel—Lost Profits as Part of Damages, 19 Ford. L. Rev. 223-5 (1950).

Damages—Inclusion of Loss of Profits in Plaintiff's Business, 77 U. Pa. L. Rev. 698-9 (1929).

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Eminent Domain—Damages—Loss of Anticipated Profits, 21 Va. L. Rev. 950-1 (1935).

Measure of Damages and Profits in Patent Causes, 41 Harv. L. Rev. 906-9 (1928).

Speculative Profits as Damages for Breach of Contract, 46 Harv. L. Rev. 696-701 (1933).

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SUPPLEMENTAL PROCEEDINGS

(Continued from page 406)

office (Los Angeles) has forms for this purpose. The case of Tucker v. Fontes[5] points out that no affidavit is needed so far as Section 714 is concerned, only an order. However, Rule 13 of the Rules of Superior Court for Los Angeles County requires that an affidavit shall be used. As to Section 715, where the writ is outstanding, both the rules and cases require an affidavit showing that the debtor "has property which he unjustly refuses to apply toward the satisfaction of the judgment, . . ." The affidavit need not be in any particular form.[6]

An order for the examination of the debtor of the judgment debtor under Section 717 of the Code of Civil Procedure is obtained by an affidavit showing: "that any person or corporation has property of such judgment debtor, or is indebted to him in an amount exceeding fifty dollars." The showing must be sufficient to satisfy the judge or justice who signs the order. It should not be on hearsay, or information and belief. State the *facts* that lead to the belief that the third person comes within the above quotes.

The order directs the appearance of the debtor of debtor before a judge, justice or referee appointed by him. Service of a copy of the order must be made directly on the debtor or alleged debtor of debtor, or if either be a corporation, upon an officer thereof.[7] Although there is no provision in the code as to how many days' service should precede the hearing, it is safest in Los Angeles County to have at least five days.

You are entitled to the first examination as a matter of right upon proceeding as above outlined. Any subsequent hearing is in the sound discretion of the court.[8] An application therefor must show the date of every previous examination, the purport of the order made at the conclusion thereof, and a full statement of what new facts have been discovered since the last examination.[9]

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[5]70 C. A. 2d 768 (1945).
[6]*Ibid.*
[7]Bronzan v. Dobraz, 93 Cal. 647 (1892); Drew v. Sup. Ct., 180 Cal. 711 (1919).
[8]Watson v. Pryor, 49 Cal. App. 554 (1920).
[9]Rule 13, Rules of Superior Court for Los Angeles County.

The place of examination must be the county where the debtor, or debtor of debtor resides or has a place of business.[10] If the debtor does not reside in the county in which the judgment was entered, Section 722 of the Code of Civil Procedure provides a complete answer. File an abstract of the judgment with the clerk or justice of the proper court in the county of the debtor's residence or place of business. Proceed from then on by affidavit and order as though the judgment had originally been entered in that county.

At the hearing it is proper to subpoena witnesses the same as in the trial of the action.[11] But beware of a pitfall in so doing. Occasionally counsel has information leading him to believe that the wife or relative, or friend of the debtor is the recipient of money or property from the debtor for which there was no consideration. He subpoenas the witness and on examination his suspicions are verified. He then asks the referee for a turnover order. The application must be denied because the party is not properly before the court to give the power to the referee to make any order. The chagrin and embarrassment thus caused can be avoided by bringing the party in by way of examination of debtor of debtor instead of as a witness.

The scope of the examination is quite broad so far as the debtor is concerned. However, there is a reasonadle limitation as to how far into ancient history you may probe, the guidepost or starting point being the date the cause of action arose. Certainly a complete inquiry should be allowed subsequent thereto, and prior as far as the presiding officer feels is reasonable under the facts before him.

The examination of a debtor of a debtor is usually limited to the situation set up in the creditor's affidavit as the basis for the appearance. In other words, the fact that a corporation owes the debtor some money does not entitle the creditor to examine all the corporate books. This situation likewise is limited only by the sound discretion of the presiding officer.

What may be the subject matter of the inquiry? The only limitation is that it be relative to property, real or personal, not exempt from execution. Check the exemption statutes before

[10]Section 717.1 of the CODE OF CIVIL PROCEDURE.
[11]Section 718 of the CODE OF CIVIL PROCEDURE.

attempting an inquiry. A basic examination should include the following general subjects; ownership of real property, when, where, value, encumbrances, etc.; occupation or profession and income therefrom; stocks and bonds; bank account; safe deposit box; personal property other than household furniture and wearing apparel; debts owing to debtor; insurance; automobile or other vehicles; patents, copyrights or trade-marks; interest in estate of any deceased person; income tax report, sum reported and whether he has copies available; etc.

Judges or referees who conduct these hearings day after day can tell you what the basic story will be when you find the debtor had valuable property just prior to judgment. Many times things are not what they seem at all, much like the old maid who told the town gossip that a neighbor of hers must be drunk all the time, for his car was often parked in front of the tavern all night. The neighbor heard the tale—and for three nights parked his car in front of the old maid's house. Almost invariably the story is that he owed a substantial sum of money to a relative or friend and because he couldn't pay he had to transfer the property in

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satisfaction of the debt. Further inquiry reveals that the money came from the other party in various sums, at various times, in cash, never by check. No note or other evidence of the indebtedness was kept by either party. After the same story is related time after time, with refinements, the referee becomes a little skeptical as to the truth thereof. Occasionally our skepticism is justified as shown by the story of one debtor with reference to his car. His income tax report for the year after the alleged transfer showed a deduction for depreciation thereon.

Even though such transfers are very questionable it is difficult for the referee to make an order to turn over that which has found its way into the hands of a third person.[12] As to property in hands of debtor, not exempt, an order can be made turning it over to the creditor, sheriff, or clerk in satisfaction of the debt. The fact that the debtor has an unassignable property, *i.e.*, a postal savings certificate, or savings bond does not mean the asset cannot be reached. The referee may order the debtor to cash the certificate or bond and apply the proceeds to satisfaction of judgment.[12a]

The writer has also restrained a debtor from moving his car from the parking lot for two hours after a hearing so that the creditor may obtain a writ and direct the sheriff to pick up same. This is known as putting a debtor on his feet.

No findings are required of the referee and his ruling is conclusive between the parties, subject to appeal.[13]

Once in a great while the assets of the debtor may be of a kind which cannot be reached directly and expeditiously by execution or order, an example being where periodical payments are being made on a promissory note in debtor's favor. A receiver may be appointed in such a situation to collect the payments as made and apply them to the judgment. A receiver may also be appointed to collect accounts receivable and apply.[14] Keep in mind that the appointment of a receiver is done by a judge and not by a referee. The referee can assist you in obtaining the receiver by restraining the disposal of property pending proper application.

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[12]Section 719 of the CODE OF CIVIL PROCEDURE; Finn v. Butler, 195 Cal. 759 (1925); Medical Finance Association v. Karnes, 32 C. A. 2d Supp. 767 (1938).

[12a]Citizens Bank v. Roe, Civ. A. 4938, App. Dept., Sup Ct., Los Angeles County.

[13]McCullough v. Clark, 41 Cal. 298 (1871).

[14]Tucker v. Fontes, *supra;* Section 564 of the CODE OF CIVIL PROCEDURE.

In Los Angeles County the receiver would be appointed in the Writs and Receivers Department, Department 34.

After the examination of a debtor of a debtor the kind of an order that can be made is dependent upon the answer of the party examined. If he admits he owes or has property, an appropriate order may be made forthwith. If he denies the debt or testifies there are other claims, a restraining order is the usual limit. Restraint re disposal of the disputed asset may be for a sufficient length of time to allow the creditor to take whatever steps are necessary to determine title. The referee cannot try title to the money or property in a supplemental proceeding. The rights of third persons cannot be litigated without being properly before the court.[15] However, the story told by the third person may be so incredible as to be mere pretense and not a claim or denial in good faith. In such an event the referee may ignore the claim and make an order to pay.[16]

If, after being properly made, an order is not obeyed by the debtor, or his debtor, he may be punished for contempt by the court ordering the reference.[17]

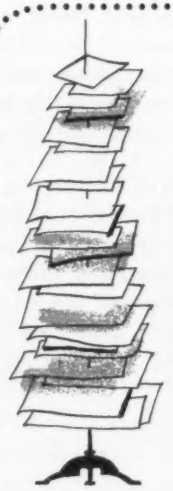
It is the observation of the writer, after ten years in conducting these examinations, that very seldom is an asset found, out of which the judgment may be immediately satisfied. But it has come to my attention many times that the examination has a salutary effect on the debtor in producing a settlement. When you dig diligently and keep on digging, and digging, the debtor becomes alarmed that you may reach pay dirt, so he, in order to keep you from snooping further, makes an offer of part payment. At this stage of the proceedings you will have to determine whether a poor settlement is better than a piece of paper in your desk drawer. It also appears to me that the successful creditor is the one who has conducted independent investigation which furnishes the leads for questioning the debtor. A little detective work may be the only way to find a starting point for your subsequent examination.

In view of the difficulty encountered in attempting to collect a judgment from an unwilling debtor, it would appear desirable

[15]Deering v. Richardson-Kimball Co., 109 Cal. 73 (1895); Colyear v. Sup. Ct., 40 Cal. App. 462 (1919); Miller v. Sup. Ct., 82 Cal. App. 634 (1927); Takahashi v. Kumishima, 34 C. A. 2d 367 (1939).
[16]Parker v. Page, 38 Cal. 522 (1869).
[17]Section 721 of the CODE OF CIVIL PROCEDURE.

to this writer to adopt a new and additional supplemental remedy, used in New York and New Jersey. It is handled by special execution and supplemental proceedings and in general provides for payment of the judgment out of future earnings or income. The procedure takes into consideration the debtor's needs for support of himself and family. A judgment creditor there can obtain relief where a debtor makes a substantial salary but spends it as fast as it is earned. It obviates the necessity of repeated levies on employers on successive paydays. For these situations and others, it is the opinion of the writer that the California law on collection of judgments would be materially strengthened by adopting statutes similar to those in New York and New Jersey.

In conclusion may I point out that your client's interests obligate you to conduct supplemental proceedings. First, for immediate discovery of assets; secondly, for the purpose of protecting your record under Section 685; and thirdly, to scare the debtor into a settlement. A little ingenuity, and some detective work should enable you to shift some judgments from the pending file to the dead file.



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UNEMPLOYMENT INSURANCE

(Continued from page 408)

able advice to the client as to the eligibility of specific claimants and can adequately present to the various authorities the basis upon which the individual should be disqualified.

There are three places where this activity can be of value. Initially, with the Department of Employment when the claim is filed, and notice given to the employer; secondly, by taking appeals to the Referees of the California Unemployment Insurance Appeals Board and adequately presenting either in person or by affidavit the facts upon which the employer relies; and thirdly, by appeal to the California Unemployment Insurance Appeals Board itself with proper presentation in written form of the position of the employer. In addition, in those cases of sufficient importance, the lawyer by properly advising his client through all of the procedure is better prepared to handle and to present the case to the courts through the remedy of mandamus. The proceedings up to the judicial procedure are quite informal, as is common in many administrative agencies, but an adequate orderly presentation is extremely effective. Although in most cases a lawyer cannot afford to spend the time necessary to watch each claim or handle the particular procedure before it reaches the Appeals Board, he can, by advising his client as to procedure and as to the requirements of the act, be able to supervise properly the matter so that the client gets the results best suited to a proper determination. Thus, an understanding of the provisions of the act relating to payment of benefits can be of considerable value.

In this article, the writer can only very briefly discuss the intent and purposes of the Unemployment Insurance Act and some of the applications by the Department of Employment and the Appeals Board. However, it is hoped that it will engender some interest and understanding which will assist in the work of arousing interest to the state where a proper supervision or policing of unemployment insurance will be possible. It is the opinion of the writer that a large portion of the defects in the operation of the Unemployment Insurance Act arise from the lack of interest by

the members of the bar and as a partial result from the lack of interest by their clients, the employers of labor throughout the state. A complete participation by all employers in a supervision and policing of the unemployment insurance program would mean an elimination of a large portion of the complaints which have been made against the administration. It would not, however, eliminate some of the defects in the act itself which can be eliminated only by legislative change.

Essentially, unemployment insurance was a creature of the depression of the thirties. It was believed that a fund could be built up which would alleviate the catastrophe that protracted layoffs would bring to the average worker. The idea prevailed among what we might call a conservative-liberal group that economic depressions were self-accelerating for the reason that the elimination of the weekly pay check caused a retraction of spending which resulted in a reduction of manufacturing which resulted in a further reduction of pay checks.

Unemployment insurance was intended to cover the period when, because of the vagaries of our economic system, an individual was unable to obtain employment. In addition, it was intended to protect our standard of living by allowing the individual a reasonable period to seek employment in his highest skill and not force him to accept employment immediately in a lower classification which would result in a change in his standard of living and by the necessary chain of events to force others to change their standard.

Unfortunately, for our deftly spun theories, the human element is always present and it has been especially a factor in the development and operation of our unemployment insurance system. It is the opinion of the writer that it is this human factor that has caused most of the difficulties and which has been the subject of most of the startling headlines in the public press. It has caused a demand by employers for more stringent control, of the Department for more administrative funds and of the claimants for more liberal interpretation of the act.

The following discussion of the act and its interpretation may help to bring out this particular point somewhat more vividly.

The California Unemployment Insurance Act provides, in its declaration of legislative intent, that the act is to provide a system of benefits for those unemployed through no fault of their own (Section 1). This would appear to be a declaration unnecessary to interpret and easy to administer. Such, however, has not been the history of either determination or interpretation. In the first place, the Legislature quickly confused the issue by providing that disqualification of those who voluntarily leave their employment should only be for a limited period and that no disqualification should be imposed if the claimant voluntarily quits with good cause [Section 58(a)(1), California Unemployment Insurance Act].

Just what constitutes good cause for voluntarily leaving employment sufficient to allow the payment of benefits under the Unemployment Insurance Act which intends to cover those unemployed through no fault of their own? Here are a few of the decisions of the Unemployment Insurance Appeals Board holding that the claimants had good cause for voluntarily leaving their employment.

The adoption of a child (*Phillips*, Ben. Dec. 5304); leaving to join husband (*Jones*, Ben. Dec. 5007); the erroneous belief that they were discharged (*Mount*, Ben. Dec. 4969); leaving to get married (*Rigsby*, Ben. Dec. 5197); illness in the family (*McCau*, Ben. Dec. 5925).

On the other hand, the Appeals Board has held that individuals are not entitled to benefits for the disqualifying period of two to five weeks where the leaving was by unauthorized leave of absence (*Edmunds*, Ben. Dec. 5239) or in anticipation of discharge which actually had not taken place (*Flack*, Ben. Dec. 5531). In addition, the Board has held that an individual was subject to disqualification when his conduct was such as to cause his arrest as a result of which he was not able to report for work (*Beal*, Ben. Dec. 5309). The Board has also held that leaving work in order to rest for a week is not good cause (*Kruger*, Ben. Dec. 5315), nor is leaving the state to avoid impending garnishments (*Bowser*, Ben. Dec. 5372) and the same rule applies to leaving to accept

another position where there is no definite starting date of that position and it does not materialize (*Elliott*, Ben. Dec. 5267).

It should be noted here that the argument can be made that no individual is ever voluntarily unemployed as long as he is seeking a job and that by requiring a test of availability in Section 57 of the act the Legislature has carried out the intent expressed in Section 1. This argument is of course subject to the fairly simple rejoinder that presumably the individual would have been working except for the fact of his voluntary leaving. It would seem fairly evident that the legislative meaning of voluntarily unemployed did not encompass only those not in the labor market.

In relation to the voluntary-quit problem it should be noted that the legislative action in 1939 which inserted the additional test that the quit must be from the most recent work has made the administration of this particular section more difficult. Thus an individual who has voluntarily left his work without good cause and prior to the filing of a claim has been re-employed is not subject to any disqualification for the previous voluntary quit. A similar provision in Kentucky was held unconstitutional last year but has not as yet been tested in California (*Babb v. Bullitt*, 220 S. W. 2d 394). The Appeals Board has held that even one hour's *bona fide* work is sufficient to call into being the most recent work provision of Section 58(a)(1) of the Act (*McCullough*, Ben. Dec. 5364).

In 1947 the Legislature provided some relief for employers by allowing a limited elimination from charges to the employers' account for benefits paid after a period of disqualification under Section 58(a)(1). In 1949 that relief was expanded so that in nearly every instance after a disqualification under Sections 58(a)(1) or (a)(2) employers are not subjected to a charge to their accounts for benefits paid to claimants so disqualified. It is therefore extremely important that proper protest be filed to prevent individuals who have voluntarily quit their employment or who have been discharged for misconduct from receiving benefits without the proper disqualification.

Considerable comment in the public press is directed to the

section which requires individuals to accept suitable employment and defines suitable employment. The definition which is contained in Section 13 of the Act reads as follows:

> "(a) 'Suitable employment' means work in the individual's usual occupation or for which he is reasonably fitted, regardless of whether or not it is subject to this act.
>
> In determining whether the work is work for which the individual is reasonably fitted, the commission shall consider the degree of risk involved to his health, safety, and morals, his physical fitness and prior training, his experience and prior earnings, his length of unemployment and prospects for securing local work in his customary occupation, and the distance of the available work from his residence. Any work offered under such conditions is suitable if it gives to the individual wages at least equal to his weekly benefit amount for total unemployment.
>
> In any particular case, in which the commission finds it impracticable to apply one of the foregoing standards, the commission may apply any standard set by it which is reasonably calculated to determine what is suitable employment.
>
> (b) Notwithstanding any other provisions of this act, no work or employment shall be deemed suitable and benefits shall not be denied to any otherwise eligible and qualified individual for refusing new work under any of the following conditions:
>
> (1) If the position offered is vacant due directly to a strike, lockout, or other labor dispute;
>
> (2) If the wages, hours, or other conditions of the work offered are substantially less favorable to the individual than those prevailing for similar work in the locality;
>
> (3) If, as a condition of being employed, the individual would be required to join a company union or to resign from or refrain from joining any *bona fide* labor organization."

This would appear to be a fairly distinct and clear wording of the principle that the individual should take employment which

is reasonably suited to his abilities and capacities. The writer views the legislative intent behind this section as being that the claimant should be required to take employment which a reasonable and prudent man in the shoes of the claimant would have taken if the Unemployment Insurance Act had not been enacted.

This section, however, has been converted into a tug of war between employer and labor representatives, and the result has been a set of interpretations of the section which does violence to its obvious meaning. Probably the most striking example is the fairly recent case of Gana Jones where the claimant had been employed as a script writer for approximately $100 a week, but who refused after a period of nearly two years during which she had had five days' work to accept employment for which she was qualified at 65 cents an hour. The Appeals Board held in this case that her refusal was reasonable as the work was not suitable. Under this interpretation it would appear that the definition of suitable employment in Section 13 was intended to allow individ-

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uals to draw unemployment insurance benefits when there were positions available which they were qualified to accept and after an extended period of unemployment had indicated some lack of potentialities in their previous field of employment. In addition, the Board has recently held that a union plumber had the right to refuse a non-union job because of possible union penalties (*David Bryan*, Ben. Dec. 5539). It also has held that an offer at the minimum wage for the type of employment could be refused where the individual had had above minimum wages in his prior employment (*Terrell*, Ben. Dec. 5045) and that an individual could refuse to work on a particular ship (*Highberger*, Ben. Dec. 5015). On the other hand, where an individual refused to work for the prevailing wage, the Board has held him to be disqualified under Section 13 (*McClendon*, Ben. Dec. 5031) and similar disqualification has been assessed when an individual failed to apply for a job for which he had received an offer or applied only by telephone (*Lee*, Ben. Dec. 4507, and *Crivello*, Ben. Dec. 5051).

It is impossible to discuss the numerous decisions of the Appeals Board on the question of suitable employment. However, it should suffice to say there has been no rule laid down which would seem to be clear and explicit and which would be consistent with the provisions of Section 13 considered in conjunction with the legislative intent expressed in Section 1.

In 1947, the California Legislature, acting in response to criticisms of the operation of the Unemployment Insurance Act, provided among the requirements for eligibility for benefits that the individual should actively seek work on his own behalf. It was obviously the intent of the Legislature that this would prevent the previous practice of claimants sitting and waiting for employment to come to them. Although this section has helped to some extent it has not achieved its purpose largely because of the interpretation placed upon the section by the Department and the inability of the Department in this period of tremendous claim load to properly examine the claimants as to their activities in job hunting. The Department regulations read as follows:

"209. CLAIMANT'S EFFORT TO SEEK WORK ON HIS OWN BEHALF.

A claimant is ineligible for unemployment compensation benefits for any period for which the Department finds that he has failed to make reasonable effort to seek work on his own behalf. The facts and circumstances in each case shall be considered in determining whether such reasonable effort has been made. The claimant shall be required to show that he has, in addition to registering for work pursuant to Section 203 of these regulations, followed a course of action which is reasonably designed to result in his prompt re-employment in suitable work, considering the customary methods of obtaining work in his usual occupation or for which he is reasonably suited, and the current condition of the labor market. Subject to the foregoing, actions of the following kind will be considered reasonable effort to seek work on his own behalf if found by the Department to constitute effective means of seeking work by the particular claimant:

a. Registering with the claimant's union hiring or placement facility.

b. Registering with a placement facility of the claimant's professional organization.

c. Applying for employment with former employers.

d. Making application with such employers who may reasonably be expected to have openings suitable to the claimant.

e. Registering with a placement facility of a school, college, or university if one is available to the claimant in his occupation, or profession.

f. Making application or taking examination for openings in the civil service of a governmental unit with reasonable prospects of suitable work for the claimant.

g. Registering for suitable work with a private employment agency, or an employers' placement facility.

h. Responding to appropriate 'want ads' for work which appears suitable to the claimant.

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i. Any other action which the Department finds to constitute an effective means of seeking work suitable to the claimant.

No claimant shall, however, be denied benefits solely on the ground that he has failed or refused to register with a private employment agency or any other placement facility which charges the job-seeker a fee for its services.

A claimant shall be deemed to have failed to make a reasonable effort to seek work on his own behalf if the Department finds that he has wilfully followed a course of action designed to discourage prospective employers from hiring him in suitable work.

Notwithstanding any of the foregoing, if the Department finds that for a particular locality, occupation, or class of claimant during a certain interval, the prospects of suitable job openings other than those listed with the public employment service are so remote that any effort to seek work other than by registration for work pursuant to Section 203 of these regulations would be fruitless to the claimant and burdensome to employers, then such registration by the claimant shall be deemed a reasonable effort to seek work on his own behalf.

Provisions of this section do not apply to claimants applying for benefits for a week of partial unemployment. (Added, effective October 23, 1947.)"

The Appeals Board has interpreted the statute and regulations to mean that mere use of one ad is insufficient as is mere contacting of a former employer (*Turner,* Ben. Dec. 4956). The Appeals Board has required a reasonable canvass of all potential employment opportunities in the area (*Peronto,* Ben. Dec. 4887). It has, however, allowed union rules to govern where the union prevents direct contact of employment opportunities (*Schultz,* Ben. Dec. 4090), and has held that to fail to contact a former employer is not itself a ground of ineligibility (*Cook,* Ben. Dec. 4884).

A more thorough program on the part of employers in informing the Department of work opportunities and of activity of

claimants in that regard would make this section considerably more effective.

In addition to the general disqualifying text on eligibility the basic test is whether or not the individual is available in the particular period. This requirement, which is contained in Section 57(c), has in all probability been the source of the majority of disqualifications but its interpretation has been the basis of considerable criticism, especially by employer groups. Among decisions which have been criticized are those providing that there is no need to accept work which requires commuting if there is potential employment in the area (*Madsen*, Ben. Dec. 4592), and those providing that an individual moving to an area where the work is seasonal is available if he is willing to do the work within the area (*Arcudi*, Ben. Dec. 4904). There are numerous decisions on this point which of course cannot be mentioned in a discussion of this brevity, but much can be done to tighten up the availability requirements in the administrative level and in the Appeals Board level.

Section 58(a)(2) provides that an individual who is discharged from his most recent work because of misconduct is subject to disqualification. The Appeals Board, adopting the language of the Wisconsin Supreme Court in *Boynton Cab Co. v. Neubeck*, 296 N. W. 636, has stated that the term "misconduct" means conduct evincing such willful or wanton disregard of standards of behavior which the employer has the right to expect of his employee, or in carelessness or negligence of such degree or recurrence as to manifest equal culpability, wrongful intent or evil design or to show an intentional and substantial disregard of the employer's interests or of the employee's duties and obligations to his employer (*Jenkins*, Ben. Dec. 4648).

The Board has held such things as continued absenteeism without justification (*Mason*, Ben. Dec. 4891), leaving work early in disobedience to the employer's instructions (*Doehrer*, Ben. Dec. 5314), repeated tardiness (*Purnell*, Ben. Dec. 4828), falsification

of an employment application (*Tivan*, Ben. Dec. 5286), and various types of insubordination (*McDade*, Ben. Dec. 5103; *Stinett*, Ben. Dec. 4853) to be discharges for misconduct within the meaning of the section.

On the other hand they have held where the tardiness was due to impelling personal reasons (*Eden*, Ben. Dec. 4685) or where there was repeated bickering between the employee and his supervisor or where there were merely one or two negligent acts, the employee was not guilty of misconduct within the meaning of the section (*Stinett*, Ben. Dec. 4853).

The burden of proof in willful misconduct cases is upon the employer (*McDade*, Ben. Dec. 5103). There are numerous other decisions on misconduct and it is one of the fields in which a thorough preparation and previous advice as to the retention of proof is a very important factor.

One of the fundamental theories of unemployment insurance is that it shall not determine the merits of a trade dispute but shall simply examine the facts incident to the leaving and ascertain at whose volition the cessation of employment occurred. Section 56 of the Act provides that an individual is not eligible for unemployment insurance benefits if he has left his employment because of a trade dispute and continues to be ineligible during the period the trade dispute exists. This important clause has caused some of the major maneuvering on the part of employers and unions and by reason thereof has made the clause subject to very severe criticism.

In contrast to most of the sections of the Act which have not been considered at all by the California courts there have been a large number of decisions of the courts in the trade dispute section.

In this brief discussion little more can be done than to call the attention of the bar to the various cases on the subject and to depict briefly the principles which seem to have evolved. In general it has been held by our courts that under Section 56 an individual is disqualified from benefits where he strikes, where he refuses to cross a picket line set up by another union, where his

unemployment is due to the fact that the union officials have served notice that they will not work under certain conditions although the individual himself has not actually refused to work and, finally, where his unemployment results from the fact that as part of one general strike strategy the employees strike a single plant and the other employers in the bargaining group close down their plants.

Matson Terminal, Inc. v. California Employment Commission, 24 Cal. 2d 695;

W. R. Grace Company v. California Employment Commission, 24 Cal. 2d 720;

Bodenson v. California Employment Commission, 17 Cal. 2d 321;

McKinley v. California Stabilization Commission, 34 Cal. 2d 239.

On the other hand, the California courts have held that unemployment caused by a lockout is not the basis of disqualification and that where the employers changed the working conditions as a matter of trade dispute strategy the employees who thereupon left their employment were not disqualified under Section 56.

Bunny's Waffle Shop v. California Employment Commission, 24 Cal. 2d 735.

In addition to the advice which a lawyer can give his client in handling benefit matters under the Act he may also be helpful in the determination of whether the individuals are independent contractors or employees (Section 7, Unemployment Insurance Act), whether a particular payment constitutes wages (Section 11), whether severance or vacation pay precludes payment of benefits or whether the charges made during the preceding year to the employer's account are correct or incorrect. There is a great deal which a lawyer can do in this field which presently is being left to non-professional advisers or is being completely ignored. A study of the Unemployment Insurance Act will well repay any member of the bar.

BROTHERS-IN-LAW

(Continued from page 416)

The **Chicago** Bar Association Foundation recently received a bequest of $5,000 under the will of Wallace E. Shirra of **Pasadena.** He was an active member of the **Illinois** Bar until 1938 and a non-resident member from that time until his death.

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United States Senator Richard G. Nixon was a featured speaker at the 1951 conventions of the **Minnesota** and **Ohio** Bar Associations.

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In the two years and a half which have elapsed since I became the dean of a law school, some two hundred and fifty individuals have applied to me for employment as teachers at my school. The applications have been made in person, by letter, by postcard, by telegram, by long distance telephone, by transatlantic cable, and by dossier elegantly bound in limp red leather, tastefully tied with yellow ribbon, and handsomely illustrated with photographs and notarized certificates bearing gold seals and encased in cellophane. No one has yet applied on a long-playing record, but time brings all things, and no doubt that too will come . . .

The great majority of the applicants are all the wrong people. One gathers that every broken-down lawyer who has made a failure of practice in Keokuk, or Kankakee, or Kokomo, or Kalamazoo, or who is in difficulties with arthritis, or the discipline committee, or his wife, feels an irresistible urge to pull up stakes and start anew in sunny California, where every prospect pleases. And what is more natural than his desire to make a completely fresh start, and try his hand at the fascinating game of teaching the beginner all he has learned in those twenty-seven years. . . . From "Advice to the Lovelorn," by William L. Prosser, Dean, University of California School of Law at Berkeley. Reprinted by permission from *Journal of Legal Education,* published by American Association of Law Schools. Copyright 1951.